

EXTRACTS FROM THE DEBATE,

HELD IN THE LEGISLATIVE COUNCIL OF PRINCE EDWARD ISLAND, FRIDAY, APRIL 20th, 1849,

ON

THE ONE-NINTH BILL;

TOGETHER WITH

THE RESOLUTIONS

6363
28.5.56

Which unanimously passed the Council, after the Bill had been read a
Second time and withdrawn.

THE HON. MR. HENSLEY. The purpose of the Bill, he believed, was a benevolent one, as it was intended to remove from the minds of the tenantry an apprehension which has been excited and diffused among them, that some of the proprietors entertain the unwise and unjust intention to demand, in satisfaction of the fictitious Sterling inserted in some of their leases, a payment of an entirely different character to that which they have been accustomed to make to them, by adding one-ninth to currency of the Island. He called it a fictitious Sterling, because he did not find that in those leases it has been the custom to define in what manner this British Sterling was to be paid—whether it was a payment in guineas of a certain weight and fineness—whether it was a payment in dollars, at five shillings, with a piece punched out of them, as was the case during a part of this period, or of the same dollars at five shillings in their more perfect state—whether it was Halifax Currency, with the one-ninth added (the imperfect idea of British Sterling which appears to have been the ruling notion of former days)—or, at a later day, of sovereigns of due weight and intrinsic value. The currency of this Island has, from the erroneous and pernicious measures which have been resorted to at different times, been thrown into such a state of confusion, that whilst the law enacts that the dollar shall be estimated at 5s. the Government receives and pays it at 6s., and the Sterling value rendered in the currency of the Island is 6s. 3d. In the midst of this confusion of values, how is the settler in the wilderness to discover in what manner this mysterious monster called British Sterling is to be satiated, but in the mode and after the example of his father, or his grandfather, or his predecessor in the farm, or he himself has been accustomed to feed it, by putting into its mouth a certain number of pound notes of the Island, with the one-ninth added, to make up its meal to its usual and ordinary measure? British Sterling, if it meant anything, meant British coins of standard weight and purity; an engagement which it was and is utterly impossible for the tenantry of the Island to fulfil—an engagement which, he firmly believed, never has been fulfilled; and indeed the whole history of the transactions between landlord and tenantry in this matter shows clearly that the British Sterling inserted in the leases, was a phrase not fully comprehended by either, and has remained a dead letter through all the changes which have taken place in the value of the currency of this Island. But however well intended the Bill may be, it has not received that degree of consideration and attention which such a measure deserves and requires. It is a sort of Procrustian law, attempting to deal alike with all, however dissimilar the circumstances may be. It is as if a hatter or a tailor should make all his articles of the same size and measure, and then insist that they should fit all his customers with equal precision. But putting aside those considerations, he was of opinion, that the Bill is not called for by any measure of sufficient importance to justify its enactment. Rumours may have been afloat, from time to time, that parties were contemplating such an unjust and injurious proceeding, as the Bill is intended to prevent; but he thought it will be quite time

enough for the Legislature to interfere, when any one is unwise enough to raise the question. Obscure claims are best left in their obscurity. It will be time enough, when any one has the rashness to raise them from their dormant state, to take such measures as may then be found advisable for the protection of the tenantry. He did not believe that any man of common discretion and just views, will ever attempt to unsettle a mode of payment to which he has tacitly assented through a course of years, as the adequate fulfilment of the original contract (however worded); and if there should be found one, he believed that the good sense of others would discountenance and restrain the grasping and unworthy design. He was the more strengthened in this belief, when he found that a very similar attempt was made by a noble Lord, during the depreciation of the Notes of the Bank of England, in the year 1811, when the Government, composed of persons the most of them being large landed proprietors, immediately interfered to prevent the injurious and oppressive effects of such conduct, and the ternus used, both in the House of Lords and Commons, shew the feeling of reprehension and disapprobation which his Lordship's conduct had excited. It might not be unserviceable if he read to their Honors a few extracts from the debates of those times, as they are well calculated to initiate right views upon the subject into minds that may not have given much attention to it previously. On Thursday, June 27, 1811, in consequence of the following notice having been given by Lord King to his tenantry, that he would no longer receive Bank of England notes at their nominal value, in consequence of their great depreciation, Lord Stanhope introduced a Bill, intituled "an Act for making more effectual provision for preventing the current gold coin of the realm from being paid or accepted for a greater value than the current value of such coin; for preventing any note or notes of the Governor and Company of the Bank of England from being received for any smaller sum than the sum therein specified; and for staying proceedings for any distress by the tender of such notes." His Lordship introduced the bill into the House of Lords, with the following remarks:—"The subject to which the Bill referred was of the most material importance to all classes and descriptions of people in the country. He saw a letter yesterday, the contents of which surprised him not a little. In consequence of it he repaired to some of the most eminent bankers and lawyers—two classes of men whom he thought most likely to advise him well upon the subject. He had the satisfaction to find that those among the Bankers whom he had consulted, were of opinion that something was necessary to be done in consequence, and that further, what he proposed were the most proper measures to be adopted. He then came down to the House, &c. He had received information, the substance of which was, that a person of large landed property in the country, from some motive or other, had given notice to his tenants, to pay him his rents now due in gold; but he further heard, that this person had either insinuated or expressed, that if he should take Bank Notes in such payment, he should only take them at the rate of 16s. in the pound! But if it were 13s 6d. or any deterioration or

depreciation, it was of no importance with respect to the principle. What might be the consequence of such a procedure? In the first place, it would be a gross injustice towards the tenants. Suppose one of them owed him £400 Sterling, would it be just to call on him to pay £500 in the shape of Bank Notes? for such might be the effect?" The Earl of Liverpool—"As to the case alluded to by the noble Earl, he understood it was not only as was stated by him, but that the alternative of receiving the Bank paper only at a depreciated rate, was made a positive condition! That the rents should be paid either in British or Foreign gold, or in depreciated Bank paper! But he should repeat his firm belief, that such an intention, even if acted upon, would induce no other person so to act; the example would not be followed." Lord Stanhope again:—"The object of the Bill was to prevent injustice; should it not be admitted, that in the case of a mortgage upon an estate, the estate must pay the interest of the mortgage, before the proprietor touched a shilling of the rent for his own use? Was not, in the case of money borrowed by the public, the whole landed property of the country pledged to the payment of the public creditor? Was it just, then, that he should be compelled to receive depreciated notes in payment of his dividend, at the full value expressed in them, that he should receive only £100 for his £100 income, whilst the land proprietor should receive for his £100 rent, £120!" The Chancellor of the Exchequer, Mr. Perceval, in moving the Bill in the House of Commons, said, "An imperious necessity now existed for the adoption of this Bill, and he begged to state in what manner that necessity had originated. A Nobleman of high rank and great political distinction and large landed property, had thought it proper and advisable, after having hitherto received the rents of his estates in the ordinary currency of the country, to give a general notice to his tenants, that from the period of that notice, issued immediately before the period of half-yearly payments, he would receive only gold or paper estimated by the price of gold, in the market. He declared that he could conceive no act whatever that, in proportion to the limited sphere of an individual, was calculated to produce such formidable effects against the interests of society, as that of the noble Lord, which had imposed on them the necessity of adopting the present Bill." "Could anything be more unjust?" Lord Castlereagh, "The question is whether the arm of the law shall be permitted to be directed against the debtor, to perform that which an Act of the Legislature has rendered it impracticable for him to perform. It is not for me to impeach the motives of any individual availing himself of rights which the laws of his country furnish him with the means of asserting. I am bound to suppose from the character and endowments of the noble Lord, that he acts from an honest conviction, that he is claiming from his tenant what he thinks not merely lawful, but strictly just. Denying, however, as I do, the justice of the claim, and believing that Parliament never did or could intend to suffer the law so to stand, except under an expectation that, during the Suspension Act, it would not be put in force, I consider that in consequence of this exercise of an extreme legal right on his Lordship's part, the duty of rendering their former measure consistent in point of justice with itself, had devolved upon the Legislature a task, from the performance of which, however painful, I trust Parliament will not shrink. But it is said, Will you interfere between my Lord King and his tenant, in matter of contract, and by any *ex post facto* law, disturb and alter the rights of the parties? I cannot consider the proposed relief as an *ex post facto* law. I consider it as declaratory of the true intent and purport of the Act of 1797; and I deny, in any equitable view of the contract subsisting between Lord King and his tenant, that it can be enforced in the manner proposed by his Lordship. If the grounds on which the landlord considers that his interests have been affected, had originated in any act for which his tenant could be deemed responsible, or if it had grown out of the ordinary course of events, which the parties might be bound to advert to, in making the bargain, I can understand the claim to compel the tenant to submit to a new mode of payment so infinitely disadvantageous; but when the tenant has done nothing and the Legislature everything, I do not see upon what principle of justice one party can expect to receive his full share in the advantage resulting from a measure of general policy, and to throw all the inconveniences of it upon the other party to the contract. Can it be contended that the Legislature ever meant that, in matters of contract, that one law should prevail between the public and the individual, and another between private persons—that the public

was to receive an indulgence from its creditors in the nature of its payments, which the individual debtor had no claim to expect from his creditor? Is there any imaginable principle of equity upon which it could mean to compel individuals to do that which the state did not itself perform? or, to state the fact more truly, that having (it may be presumed) for the general interest (or convenience), prohibited the Bank from fulfilling to the letter of its contract, in respect of cash payments, with the holders of its notes, it should mean to compel the holders of these notes to fulfil the letter of their engagements with respect to cash payments, with their creditors? I am further prepared to contend, that any person who, in the present state of things, endeavours to avail himself of the letter of his contract, to force payment in cash (Sterling), adopts a course altogether inconsistent with its spirit and equity, and assumes to himself not only an undue advantage over his debtor, but that he is taking to himself, under the colour of law, an advantage beyond what could have accrued to him had the currency of the country remained undisturbed. That my Lord King does not mean to submit to his fair share of the inconveniences of the times, is obvious from the principle of his claim, being that his tenant should put him, at whatever expense to himself, precisely in the same situation in which he would have stood, as to the medium of payment, if no Restriction Act had passed, and the tenant had nothing to do but to present his notes at the Bank to have them converted into coin." "To leave the tenantry under the lash of such a principle of law, if it is the purpose of any individual in the community to call it into action, I venture to assert, would be wholly inconsistent with the protection which he is entitled to claim at our hands. So long as the law shall continue to prevent the Bank of England from paying its notes in cash, so long ought the Legislature, by special enactment, to interpose and stay process either against the person or property of debtors who shall tender Bank notes to their creditors in satisfaction of their demands. But to return to the injustice of the arrangement itself, I will assume, for the sake of argument, with Lord King, that in a lease granted before 1797, the landlord's interest has been disturbed by late events to his prejudice and to the advantage of his tenant, and that he is equitably entitled to some indemnity (the reality of which case I beg I may not be supposed to admit), I still must contend that the principle upon which my Lord King has laid claim to measure the extent of the indemnity is an unjust one. His lordship assumes its equity, as it is no more than requiring a specific performance of the covenant, with certain voluntary relaxations, on his part, for the accommodation of the tenant: but I contend that the equity of enforcing the specific performance of such a covenant ceased with the first enactment of the Restriction Act, and that the conditions on which it is now proposed to be relaxed, subject the tenant to an increase of rent, not to be regulated upon any fairly ascertained change of value in the Bank paper of the country, for which alone the farmer sells his produce, but which is governed by the price of gold, which has been raised 20 per cent. by the disturbed state of our intercourse with the Continent, and may be indefinitely raised. If such a criterion is to be admitted to regulate the additional payment to be made in notes, what tenant can foresee what rent he may be called upon to pay? All that he knows is, that it is not a fixed and determinate amount of the currency, but that it depends on the extent of the expenditure, the balance of commercial payments and the state of the exchanges, which must always govern the price of gold, whether the additional amount of rent which he is to be subject to, shall be 20, 30, 50 or 100 beyond the rent specified in his lease." "I would put the whole issue upon the simple question, whether, if the tenant had been apprised previously to his signing the lease, that such a state of things (as now exists) would have arisen, that it might continue for an indefinite period, that in such case Bank notes would not be accepted at their nominal or facial value in discharge of the rent agreed upon; whether upon such a statement, the tenant would have signed the lease at the rent then agreed upon, making his person and property liable for the fulfilment of so indefinite and perhaps so ruinous a bargain. "My Lord King has introduced at this moment a novel mode of payment under a dormant stipulation in a lease. It must be admitted to be an evil of great magnitude, that between the landlord and tenantry no fixed rate of payment should prevail, but that it should be at the discretion of such landlord to decide whether his tenants shall pay him the full premium at which sovereigns are bought and sold, and which may

continually vary with the state of the Exchanges, and the increasing or diminishing issues of the notes." "In the meantime, let us take care that the law shall not be made an instrument of personal injustice, which it would be, if, when the tenant had sold the produce of his farm for Bank notes, the law should interfere, and say, the Bank (or Government) shall not fulfil the contract with you, but you shall fulfil it with your landlord. The law cannot (or ought not) to countenance so obvious an injustice." "The House was called on to see that effectual protection was provided both for the person and property of the tenants. He had declared it to be his opinion, that it was better in such a case to rely on a moral than a legal sense of duty; that had been found an effectual protection for fourteen years, and Lord King, for reasons best known to himself, and into the propriety of which he had no right to enquire, had been the first to make an infraction of this moral law. This had imposed on the House the painful duty it was now in the course of discharging, and he only hoped the remedy would prove effectual." Mr. Wilberforce:—"Of the conduct that compelled the Government to resort to such an expedient, he was willing to say little; but this much he could not avoid saying, that of all others he should have least expected that a noble Lord of the high rank, finished education, and just pretensions of Lord King, would have thought it wise and fit to resort to such an experiment. The noble Lord was bound to have reflected, that a variety of persons in a humble sphere of life, and whose sole motive was the sordid love of gain, might be glad hereafter to shelter themselves under the high authority of the noble lord, and push his example to the extent of a criminal abuse." "With respect to the Bill's defending the tenantry from the mischievous consequences it was provided to guard against, he thought that so far the Bill would be completely effectual. The evils which might otherwise ensue, came so home to men's business and bosoms, that it was impossible to hesitate to provide against the occurrence."

He might produce, for their Honor's consideration, many more quotations to the same effect; but he trusted what he had read was amply sufficient to exemplify the views entertained by the land-owners of England, and the justice and equity of these views must be apparent to all. By relieving the Bank of England from the obligation to pay upon demand, the circulation became, in a few years, filled to repletion with an inconvertible paper; as soon as this was generally perceived, the comparative value of the paper with coin became first matter of discussion, and as the disparity increased, of quarrels and litigation, until Lord King, to prove the injurious consequences of the paper system, proposed to take the step which would have thrown the burdensome results of the measures of the Government entirely upon the shoulders of the tenantry. The Government of this Colony has issued inconvertible paper, which has fallen in value, until precisely the same discussions and disputes have occurred here; but as yet no one landlord has attempted to inflict upon his tenants the injustice which Lord King contemplated; and he must point out to their Honors that it was not until the actual attempt was made, by a public notice to his tenants that he would no longer accept of the ordinary payment in notes of the Bank of England, that the Government felt it to be its duty to interfere. No doubt rumours had been afloat previously upon the subject, as had been the case here; but there is a wide difference between the maintaining of such a speculative right by way of argument, and the attempts to carry out all its ruinous consequences. But the proprietors of lands have much less reason to complain, in this case, than those of Great Britain had in theirs, for all the time in which they have been receiving their rents in a depreciated currency, with the one-ninth added, they have been paying their land-tax in the same depreciated currency, and have thus been permitted, in some measure, to secure to themselves a compensatory balance—which has not arisen to the Public Officers of the Colony, whose salaries have been reduced 20 per cent. by this depreciation.

The Hon. Mr. SWABEY.—It appeared to him that the statements of his Honor had done away with the objections on the score of interfering with private rights. Lord Eldon was quite clear, that under such oppressive circumstances as had been mentioned, that it was within the province of the Legislature to interfere, and to afford relief. The rest of his Honor's argument goes to this, that to raise the question now would be more apt to do an injury, than leaving the matter as it now stood; and that whenever such circumstances should

occur as to render it necessary to lay aside that reserve, he would then come forward and demand redress; but he (Mr. Swabey) must confess, that he felt unwilling that the question should be allowed to remain as it now is. It should be clearly and distinctly understood, whether the proprietor was to be allowed the liberty of exacting more than one-ninth or not, and that now was the proper time and opportunity for settling the matter, particularly when they were regulating as to the rates of currency. With those observations, he would leave the matter to the judgment of their Honors.

On the motion of the amendment that the order of the day be discharged, and that the Bill be read a second time that day Three Months, the House divided as follows:—

CONTENTS,—Mr. President, Holl, Hensley and Birnie.

NON-CONTENTS,—Mr. Dalrymple, Young, Rice, Swabey, Kaye and Haythorne.

The Bill was then read a second time, and immediately afterwards it was committed to a Committee of the whole House.

The Honorable the PRESIDENT was strongly impressed, that this was one of the most unwise, and impolitic measures, that could possibly have been introduced; setting aside altogether the question of legal right, and their Honors ought to bear in mind, that there was nothing whatever before them—no case made out, that called for the interference of the Legislature, by a Bill of this nature. It was not shown to their Honors, that where Rents were heretofore paid, by adding one-ninth to the Sterling, that the Landlords had now claimed 50 per cent. in addition; and he conceived, when such a case did occur, it would then be quite time enough to ask for the interference of the Legislature, if indeed, the matter came properly within the cognizance of the Legislature. In the event of the Bill, now before them being passed, there must necessarily be a suspending clause attached to it, and if the Royal allowance be withheld, which in all probability would be the case, the landlord would be armed with a much stronger argument than he at present possesses; for if, as it is argued by some of the supporters of this measure, usage makes law, and that it did so in many cases he admitted, should the Bill be defeated in the Mother Country, and the landlords endeavour to recover their rents at the increased rate it would be a very strong argument for them, that a Bill of this nature, having been passed by the Legislature of the Colony, was evidence that the usage was not so conclusive as to overrule their claims, and thus the tenant might be ousted of whatever right he might have been enabled to plead from usage. Why not therefore let the usage continue undisturbed by any enactment of this nature, and become strengthened by every year's practice, as to the construction the lessors themselves put upon their leases? Instead therefore, of conferring a benefit on the tenantry, which the framers of the Bill, no doubt, intended, he felt satisfied that their passing it would be doing them a very serious and lasting injury. He had not heard of any landlords seeking to enforce the payment of their rents in British Sterling. It was said, one had demanded it from one tenant; if true, it was the solitary exception to the general practice, and did not in his opinion, justify a legislative interference in this way; but he was strongly impressed with the idea, that if the Bill be passed here, and the Royal allowance is withheld, the promoters of this measure will have been, unintentionally it may be, the worst enemies the tenantry ever had. He could not believe it possible that the landlords would ever be so insane as to endeavour to enforce the payment of their rents in Sterling; but why suppose they will at this crisis, when the Colony, in consequence of the failure of three successive crops, is steeped in poverty to the very lips, attempt, that never attempted under more favorable circumstances. He thought they would only be too happy to get in their rents as they had been accustomed to do. The Bill being now in Committee, it remained with their Honors to dispose of it as they saw fit; he would have with pleasure voted for certain Resolutions which, he believed, his honorable friend Mr. Holl had intended to have submitted to the House before going into Committee, and which he had shewn to him; these Resolutions contained such a strong expression of opinion upon the subject, which, if adopted by this House, would, he thought, have induced any landlord who might have meditated any breach of the usage, to pause before he attempted to carry it into action.

The Hon. Mr. HOLL cautioned their Honors to pause before they proceeded further with the Bill, and to consider the consequences of a false step in a matter of such deep import-

ance to the interests of the tenant. He was perfectly convinced of the sincerity of their views in the cause in which they had embarked, and he assured them of his own anxiety to have the question properly adjusted. But let them bear in mind, that as yet the proprietors had given no just cause for this interference, and that should it fail—should the Bill not receive the Royal allowance, the situation of the tenant will be worse than it is at present—for will not the right to enforce the payment of rent in British Sterling be thereby acknowledged? And after this unprovoked act of hostility on the part of the Legislature, do they imagine for an instant that the Proprietors, thus fortified, would not urge their claim? There cannot be reasonable doubt upon the subject, and in his opinion it is far better to take a stand upon the ground of usage, which position every day tends to strengthen, than to attempt by Legislative interference to alter the terms of a bond which, in the strict letter of the law, might admit of a construction unfavorable to the interests of the tenant. He urged upon them the necessity of hesitating before they took a step which might lead to such disastrous results, and to bear in mind that the evil would be justly attributable to the Council. It would be by their hand the blow would be struck, and the effect would be irremediable. The breach which now unhappily exists between the Proprietary body and the Tenantry would be widened, and so long as such a state of things continued it would be useless to hope to see the Colony emerge from the depth of discontent and misery into which a combination of evils has of late years involved it. He thought their Honors ought to avoid all unnecessary provocation, but at the same time express their opinion on the subject, in the clearest and most intelligible terms. He had endeavoured to do so while preparing the Resolution he held in his hand, and he sincerely trusted it would have the unanimous concurrence of the Council. It did not preclude them from taking any other course that might hereafter be deemed necessary, and was based upon principles of justice and honesty; he would read it:—

RESOLVED, That it is the opinion of this Committee, that all future rents for land held under lease, or under agreement for lease, should, in equity, be paid at the rate in which heretofore such rents have been demanded and paid—such rate having been the interpretation which proprietors or their agents have for a series of years put upon their own contracts, viz:—

Where payments for rent have been demanded and discharged in currency, they should hereafter be demanded and discharged in currency.

Where the same shall have been demanded in sterling, and discharged in currency by adding one-ninth, they should hereafter be demanded and discharged at the same rate.

And where the same shall have been demanded and discharged in British Sterling, they should hereafter be demanded and discharged in British Sterling.

RESOLVED, FURTHER, That while the Committee thus expresses its opinion, founded on the conviction of the justice and propriety of such an arrangement, it is also the opinion of the Committee, that until the said Proprietors, or their Agents,

attempt to enforce a demand on other terms than those which usage has established, it would be unwise and impolitic to anticipate such a course on the part of the Proprietors, by any compulsory Legislative interference.

The Council thereby expresses its opinion, that the arrangement subsisting between landlord and tenant, and established by usage, should in fairness continue. He thought it right to confirm, not to alter, the construction the proprietor himself has given to his own contract. If, after this expression of their opinion, the proprietors think fit to enforce their claim, (which he could not believe would be attempted), the Legislature would be in a much better position, and its interference would be more justifiable. However good the intentions of parties favorable to the Bill might be, it would inevitably, in his opinion, defeat the end in view.

The Hon. Mr. BIRNIE—With regard to usage: on behalf of a friend of his, he went, about three years ago, to demand the rent due on a Farm that was leased about forty years ago; £5 11s. 1½d. currency was tendered to him, and on his remarking that the rent was payable in sterling, the tenant replied that he had never paid more,—and in corroboration of his statement, he brought a number of old receipts, which proved that no more than the one-ninth had ever been exacted.

The Hon. Mr. RICE—All were aware that no more than the ninth was exacted, and that the question would have to be decided some day, but his vote would show that he was in favor of the tenant, although, perhaps, his own interest was concerned, that it should be otherwise. He thought, as the question had been so long before them, that the better way would be for them to settle it at once. He did not admire the Bill, and he had been in hopes that some amendment would have been offered, which could have been approved of by their Honors. It had been alleged that the tenantry would be placed in a worse situation, if the Bill were passed and did not receive the Royal allowance; but would not any subsequent Bill stand the same chance of being rejected—for the same argument would apply? He conceived that it was very desirable that the minds of the tenantry should be set at rest, and that they should not be called upon to pay British Sterling. The amendment was much more to his mind than the Bill.

The Hon. Mr. KAYE remarked, that it was of very little consequence, in his opinion, in what currency the tenantry should be called upon to pay at present—for he believed that very little, if any, rent was paid; in fact, the system of Landlord and Tenant had not worked well in this Colony, and perhaps the cause of it was, that it was not suited to a new country like this.

The Hon. Mr. HOLL then moved that the President take the Chair, and the Chairman be directed to ask leave to sit again that day three months.

The Hon. gentleman then submitted the Resolution, which was unanimously adopted.

The Hon. Mr. SWABEY was anxious that the House should understand, although his Honor's amendment was carried, that had he not been precluded by that circumstance from proceeding with the Bill, he had intended to have submitted an additional clause, to the effect of leaving undisturbed the existing manner and custom of settling rents, taking care, however, that no claims should be made that had not hitherto been exacted.